Supreme Court of the United States.

DECEMBER TERM, 1872.

No. 239.

SAINT JOSEPH TOWNSHIP,

Plaintiff in Error,

vs.

JAMES ROGERS,

Defendant in Error.

ERROR TO THE SOUTHERN DISTRICT OF ILLINOIS.

ARGUMENT FOR DEFENDANT IN ERROR,

BY HORATIO C. BURCHARD.

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STATEMENT OF THE CASE.

The defendant in error recovered judgment in the court below as holder of certain coupons which accompanied and had been detached from certain bonds issued by St. Joseph Township, the plaintiff in error, in payment of its subscription to the capital

stock of the Danville, Urbana, Bloomington and Pekin Railroad Company.

The bonds to which the coupons belonged bore date October 1st, 1867, appeared to have been executed in the name of the township, and signed by the Supervisor and attested by the Clerk of the township, and each contained the following recital :

"This bond is issued under and by virtue of a law of the State of Illinois, "entitled 'An act to amend the articles of association of the Danville, Urbana, "Bloomington & Pekin Railroad Company, and to extend the powers of and con- "fer a charter upon the same,' approved Feb'y 28th, 1867, and in accordance "with the vote of the electors of said township, at the special election held "August 14th, 1866, in accordance with said act." [Record, folio 17, 18, 19.]

The act of February 28th, 1867, referred to in the bonds, authorized any "township in counties acting under the township "organization law along the route of said road," (Danville, Urbana, Bloomington & Pekin Railroad), "to subscribe to the capital stock of said company in any "sum not exceeding two hundred and fifty thousand dollars." [Record, folio 35]

Section 13 of the act prohibits the subscription "until the question has been submitted to the legal voters of the township."

It directs the township clerk, upon the presentation of a specified petition, to post notices, "notifying the legal voters of the township to meet for the purpose of voting for or against the proposed subscription," and prescribes the time and manner of giving notice, but provides :

"That where elections may have already been held, and a majority of the "legal voters of any township were in favor of a subscription to said railroad, "then, and in that case, no other election need be had ; and the amount so voted "for shall be subscribed as in this act provided : and such elections are hereby "declared to be legal and valid, as though this act had been in force at the time "thereof, and all the provisions hereof had been complied with." [Record, folio "36, 37]

The next section, (14), relates to making the subscription and issuing the bonds, and makes it the duty of the Supervisor, "*if it shall appear that a majority of all the legal voters of such township, voting at such election, have voted 'for subscription,'*" to subscribe to the capital stock of said railroad company, in the name of such township, the amount so voted to be subscribed, and to receive

from said company the proper certificates therefor; and also to execute to said company, in the name of such township, bonds bearing interest at 10 per cent. per annum, payable annually, running for a term of not more than 20 years, signed by the Supervisor and attested by the Clerk of the township. The section also made it the duty of the Township Clerk "to make a record of the issuing of the bonds, and directed their delivery to the President or Secretary of the company for its use." [Record, folio 37, 38.]

The plaintiff in error was a township along the route of the Danville, Urbana, Bloomington and Pekin Railroad, (testimony of V. B. Swearinger, record, folio 108; Joseph H. Shreeve, record, folio 115;) and an election to determine whether the township would subscribe $25,000 to the capital stock of that company was held in the township prior to the passage of the act of February 28th, 1867. (John Laird's testimony, record, folio 46, 47; David Swearinger's, 60; H. W. Drullinger's, 70, 71; David Staten's, 87; J. A. Lucas', 93; G. Jennings', 95; Joseph Kelly's, 99; J. H. Strong's, 103; J. Kirkpatric's, 109; J. H. Shreeve's, 111.)

A majority of all the "legal voters of the township voting at the election" voted for subscription; there being, according to the evidence, from 65 to 80 votes cast, of which 17 only were against, and the other votes "for subscription." (H. W. Drullinger's testimony, record, folio 74; David Staten's, 87; J. A. Lucas', 93; J. H. Shreeve's, 112.)

Pursuant to the vote at the election, the Supervisor of the township subscribed, in the name of St. Joseph Township, $25,000 to the capital stock of the Danville, Urbana, Bloomington and Pekin Railroad Company, and took a certificate therefor, (H. W. Drullinger's testimony, record, folio 75, 84; copy of subscription, do 85;) and executed, in the name of the township, the bonds now held by defendant in error, bearing interest at ten per cent. per annum, payable annually, running for the term of ten years, signed by him as Supervisor and attested by the Clerk of

the township. (Bond record, folio 18, 19 ; J. Laird's testimony, 46, 50 ; H. W. Drullinger's, 70.)

The bonds were delivered to the President of the railroad company, (record, folio 76,) and $13,000 of them negotiated to the defendant in error. With these and other funds the railroad was built, and in December, A. D. 1870, was completed through and a station thereof located in the township. (Record, folio 108, 115.) The Supervisor of the township voted upon the stock for the township in the election of directors of the company, (record, folio 84), and his expenses for delivering the bonds and attending the election of directors were audited and paid by the town. (Record, folio 65, 76, 79, 80.) The township still holds the certificates of stock in the railroad company, the certificates remaining, at the time of the trial, in the possession of John L. Smith, the Supervisor of the township, then defending the suit, and no offer ever having been made to surrender the certificates to the railroad company. (Record, folio 55, 84.)

Soon after the execution of the bonds, and about the time or before their negotiation to the defendant in error, in response to the written inquiry of the latter, made Oct. 11th, 1867, G. W. Doyle, the then Supervisor of the township, replied that "he had levied a tax to meet the interest on the bonds, which would be collected the following spring." (Record, folio 90, 117.)

The township officers failed to keep a full and perfect record of the election of August, 1866, and no record or papers of such election are to be found in the Township Clerk's office, and the Township Clerk filed no certificate with the County Clerk, as required by section fifteen of the act of Feb. 28, 1867.

An act was passed by the Legislature February 25th, 1869, which recited, in its preamble, the failure of township officers to keep full and perfect records of elections called and held, * * * and of Township Clerks to file with the County Clerk certificates, as required by section fifteen, and enacted, "that no such neglect "or omission should in any way invalidate or impair the collection "of bonds issued to aid in the construction of the railroad."

SUMMARY.

Stated in a more concise form, the material facts disclosed by the record are as follows :

At an election held in the Township of St. Joseph in August, 1866, a majority of the legal voters voted "for subscription," on the proposition that the township should subscribe $25,000 to the stock of the Danville, Urbana, Bloomington and Pekin Railroad Company, the route of whose road ran through the township.

Subsequently the Legislature of the State of Illinois passed an act, approved February 28, 1867, authorizing townships along the route of the road to subscribe to the capital stock of the company but forbidding the making of such subscription until the question had been submitted to the legal voters of the township.

The subscription was authorized upon the vote therefor at elections held *after the passage of the act*, upon the call and notice provided therein ; and also upon the vote therefor at elections *already held*, where a majority of the legal voters of any township were in favor of subscription, and the Supervisor was required to make the subscription in the name of the township if it appeared that a majority of all the legal voters of the township *voting at such election* had voted for subscription, and to execute to the railroad company, in the name of the township, bonds in payment for the subscription.

In pursuance of this act, and the vote of the township, the bonds and coupons in evidence were executed, certificates of stock delivered to the township officers, who received and voted upon them, and $13,000 of the bonds, with coupons, were negotiated to the defendant in error, and the road built through the township, with a station located therein.

The bonds themselves recite : "This bond is issued in accord-
" ance with the vote of the electors of said township, at the special
" election held August 14th, 1866, in accordance with the act of
" February 28, 1867."

The court gave these instructions :

"1st. The election held in August, 1866, as declared in the evidence, was "validated by the act of February 28th, 1867, so as to authorize the defendant "to subscribe for stock in the Danville, Urbana, Bloomington and Pekin Rail- "road, and to issue the bonds in question ; and when the stock was subscribed "and the bonds issued, the bonds are binding on the defendant in the hands of a "bona fide holder."

"2d. The recitals in the bond estop the defendant from denying the fact "of a valid election as against a bona fide holder of the bonds or coupons "attached thereto."

The printed arguments of the counsel for plaintiff in error are wholly devoted to the discussion of the legal propositions embodied in these instructions and their application to this case. In the arguments no errors are claimed except in the charge of the court to the jury. In reply on behalf of the defendant in error, it seems sufficient to show that the instructions were properly given ; or that, regardless of any erroneous instructions, the evidence sustains the verdict.

The liability of the township appears from the facts and law under which their issue was authorized, as well as by reason of the recitals contained in the bonds.

In discussing the liability of the township, it is unnecessary to present authorities to this Court to sustain the general proposition that

I.

MUNICIPAL CORPORATIONS CAN BE AUTHORIZED BY LEGISLATIVE ENACTMENT TO AID IN THE CONSTRUCTION OF RAILROADS.

The validity of subscriptions, contracts and taxation thus authorized in Illinois has been repeatedly sustained by the Supreme Court of that State.

The Legislature has the constitutional right to authorize counties and cities to aid the construction of railroads by lending their credit or by taking stock. Prettyman v. Supervisors of ——, 19 Ill., 406 ; Robertson v. City of Rockford, 21 Ill., 457 ; Johnson v. County of Stark, 24 Ill., 85 ; Perkins v. Lewis, 24 Ill., 208.

Aid in the form of a donation to a railroad company, as well as by subscription to its stock for the purpose of securing the construction of its road to a town, has been held to be a corporate purpose and permissible under the State Constitution. The Chicago, Danville & Vincennes Railroad Company v. Smith, Supreme Court, Ill., opinion Justice Thornton for the court, filed January 22, 1872.

> "In Taylor vs. Thompson, 42 Ill., 9, this Court defined a corporate purpose to mean 'a tax to be expended in a manner which shall promote the general prosperity and welfare of the municipality which levies it.' We adopt this definition, and are of the opinion that no person can doubt but that taxes expended to aid the construction of a railroad must promote the general prosperity."

This decision affirms the proposition that St. Joseph Township could be authorized to aid, by donation or the loan of its credit, in the construction of a railroad running to or through the township, and that its corporate authorities could be empowered to make the donation or pledge its credit for that purpose.

II.

St. Joseph Township was Authorized to Grant such Aid.

The authority of the township to aid the railroad arises from the general powers granted by the township organization law of the State, and the provisions of the validating act of February 28th, 1867, or from the authority conferred solely by the latter act.

1st. The township organization law of Illinois, approved Feb. 20, 1861, confers upon each town, as a body, corporate capacity to make such contracts * * * as may be necessary to the exercise of its corporate or administrative powers. Gross' Ed. Statutes of Illinois, page 742.

And, in addition to other powers, said township organization law confers upon the electors in towns the power to direct such sums to be raised, (for certain purposes,) *or for any other purpose, as they may deem necessary.* Gross' Ed., § 5, page 745.

Special town meetings are authorized by said law, to be held when deemed necessary to the interests of the town, to act upon such

subjects as are specified in the notices calling them. Gross' Ed., page 746.

In August, 1866, a special town meeting was held in St. Joseph Township, pursuant to notice given by the Town Clerk, for the purpose of voting upon the question of aiding the building of the Danville, Urbana, Bloomington and Pekin Railroad, by subscribing to its stock to the amount specified in the notice.

At the meeting a majority of the legal voters of the township voting at the meeting voted upon the proposition "for subscription."

The act of February 28th, 1867, designated the officers to act on behalf of the township, authorized them to carry out the wishes of the town, and validated the election and the manner, notice and call under which it had been held and under this act.

III.

The Supervisor of St. Joseph was Fully Authorized to Execute the Bonds on Behalf of the Town.

It is objected that the subscription and execution of the bonds by the Supervisor was illegal, because,

1st. It does not appear that a majority of all of the legal voters residing in the township voted at the election "for subscription."

2nd. The Legislature could not legalize the proceedings of an election previously held in the township, nor authorize the subscription or issue of township bonds, without a subsequent township election and vote in favor thereof.

1st. *The clause "a majority of the legal voters of the township," intended to require only a majority of the legal voters of the township voting at the election held to vote upon the question.*

That this was the intention and is the meaning of the act, is evident from the circumstances and purposes for which it was passed,

the phraseology used, and the judicial construction given to the terms employed, by the courts of Illinois, as well as of other States.

1st. The object for which the law was passed. It was to authorize townships along the line of the proposed railroad to aid and secure the construction of the road. Meetings and formal elections had been held, at which township aid had been voted. Such vote did not designate or authorize any officer to subscribe or act for the township. Legislative authority and sanction was needed. The people, through their representatives, at the following session of the Legislature, sought and obtained for townships express power to subscribe to the stock of the railroad, and for their appropriate officers to execute the necessary written evidences of indebtedness for subscription, by which money could be obtained to build the road, and prescribed the method of ascertaining the consent of the voters to such subscription where it had not already been manifested in elections previously held. In the latter case it seemed unnecessary to submit the question where the assent had already been given for the proposition, by a majority vote in its favor.

2d. The provisions of the whole act considered together and in the order in which they occur.

Section 12 of the act authorizes townships to subscribe.

Section 13 prohibits the subscription until the question has been submitted to the legal voters of the township, and gives direction in regard to petition and notice, but *provides* that no other election need be had where elections had been already held, and a majority of the legal voters of any township were in favor of a subscription.

Section 14 prescribes the contingency and manner in which the Supervisor shall subscribe and execute the bonds, it being made his duty to act if it shall appear that a majority of all the legal voters of the township voting at such election have voted for subscription. Counsel for plaintiff in error, in the teeth of the authority quoted by him, that "a proviso is something engrafted upon a preceding enactment," transfers the proviso from the 13th Section, where it occurs, and applies it to the 14th Section following, as though it read,

"The Supervisor shall subscribe if it shall appear that a majority of "the legal voters voting at such election have voted for subscription, pro- "vided that where elections may have already been held and a majority "of the legal voters of any township were in favor of a subscription "to said railroad, then and in that case no other election need be had."

It will be observed that nothing had been said prior to the proviso in regard to the result of the election. Section 13 preceding the proviso relates to submitting the question to a vote, and the proviso dispenses with the submission.

It is the whole purpose. If the vote had been adverse, it might be taken over; if favorable, the subscription could be made thereon without further vote.

3d. The impossibility of ascertaining the exact number of all the legal voters residing in a township, so that the Supervisor could know whether he should subscribe, or the public know whether the issue of the bonds was authorized.

Under the most favorable circumstances the Supervisor could know, from personal acquaintance, but approximately the number of legal voters in the township. Their qualifications depending upon age, residence, nativity and naturalization, he would have no power to ascertain by judicial investigation, were that practicable, nor in any authoritative manner, *except as they came to vote.* If the election itself was the evidence of the number, the question was free from difficulty. If a majority was required of all, voting and not voting, what tests, what evidence and what means of judicial and authoritative investigation is provided or can he exercise to determine whether it has become his duty to subscribe for the town?

Evidently the phrase "a majority of the legal voters of any township," as used in the 13th Section, is no broader than the phrase "a majority of all the legal voters of such townships voting at such election," used in Section 14, but the latter expression states more fully what the former implies.

That it was not the intention of the Legislature to require a majority of all the legal voters of the township, including those not voting at the election, to have been in favor of subscription to the railroad, is apparent from the provisions of Section 15 of the act which required the Town Clerks to file with the County Clerks "certificates of the votes of their towns." If a majority of all the voters residing in the townships were necessary, whether voting or not, the certificate of votes cast at the election would be valueless without some provision for ascertaining the number of actual legal voters in the township.

4th. The Legislature used the language, it is a legal presumption, in the sense and with a view to the construction given to the words by the courts of the State which had previously passed upon their meaning

Almost the identical phraseology occurs in Section 5, Article 7, of the Constitution of the State of Illinois, which forbids the removal of a county seat "until the point to which it is proposed to be removed "shall be fixed by law, and a *majority of the voters of the county* shall "have voted in favor of its removal to such point."

The Supreme Court of Illinois, in construing this section and the phrase "voters of the county," held

"That the voters of the county referred to were *the voters who should vote at the election authorized by it.* We hold, therefore, that a majority of the legal votes cast at this election is sufficient to determine the question of a relocation of the county seat. (People vs. Warfield, 20 Illinois, 159.)

Similar language is used in Section 6 of the same article of the Constitution of the State of Illinois, which received a similar construction from the Supreme Court of the State. People vs. Gaines, 47 Illinois, 246. The same construction has been given by the court in People vs. Wiant, 48 Illinois, 263.

"A majority of the voters of the county means a majority of those "who actually vote." Louisville & Nashville R.R. vs. County Court Davidson County, 1 Sneed (Tenn) 63

~~Louisville & Nashville R. R. vs. County Court Davidson County, 1 Sneed (Term) 63,~~ where the act of the Legislature required a proposition to create a city debt to be submitted "to a vote of the quali-

fied voters of said city," and two-thirds of such qualified voters to sanction the same, and an election had been held at which 336 votes were for and 58 against the proposition, but the Mayor declined to sign the bond because he was in doubt whether the matter was to be determined by two-thirds of all the votes polled at the special election called to vote on the question, or by two-thirds of all the voters resident in the city absolutely, whether voting or not, the court ordered a peremptory mandamus, and in the opinion said "We think it was sufficient that two-thirds of all the qualified voters who voted at the special election authorized for the express purpose of determining that question on public notice duly given, voted in favor of the proposition.

This was the mode provided by law for ascertaining the sense of the qualified voters of the city upon that question.

There would appear to be no other practicable way in which the matter could be determined. State vs. Mayor St. Joseph, 37 Mo., 270.

These decisions, "and none contrary can be found," overthrow the main defense interposed to the collection of the bonds.

Testimony on the part of the defense was produced in the court below, tending to show that less than a majority of the legal voters residing in the township voted at the election, and counsel assume that such being the fact, the Supervisor would not be authorized to subscribe, although a majority of the legal voters of the township voting at the election voted for subscription. I have for that reason more fully than necessary, perhaps, discussed the proposition and cited the authorities at length.

Within the meaning of the Statute, an "election had been held, and "a majority of the legal voters of the township were in favor of sub-"scription."

II. *The fact as to whether an election had been held, and a majority of the voters were in favor of subscription, was to be passed upon and decided by the Supervisor.*

Section 14 provides, "If it shall appear that a majority of all the legal voters of such towns or townships voting at such election have voted 'for subscription,' it shall be the duty of * * * the Supervisor in townships to subscribe to the capital stock of said railroad company, in the name of such town or township, the amount so voted to be subscribed, and to receive from said company the proper certificates therefor. He shall also execute to said company, in the name of such town or township, bonds, * * * which bonds shall be signed by such * * * Supervisor, and be attested by the Clerk of the town or township," &c.

"If it shall appear" to whom? Evidently to the officer or officers upon whom the statute imposed the duty of subscribing for the stock and executing the bonds. If it appeared to the Supervisor of the township that an election had been held, and a majority of the legal voters were in favor of subscription to the railroad, then he has to act on behalf of the town. Some one had to decide when it had become his duty, and no one else—no other officer was authorized to determine this for him. The Supervisor not being authorized or required to execute the bonds until it should "appear" that a majority had voted for subscription, it was proper that he should find and recite in the bond the fact that must appear to him before he could legally act. Such finding and recital on the bond of his conclusion would conclude the township for which he was authorized to act, as well as himself, as to whether the required majority had voted.

"A statute, in providing that county bonds should not be delivered by the commissioners until a sufficient sum had been provided by stock subscriptions, or otherwise, to complete a specified railroad, and imposing upon them the duty of delivering the bonds, when said provision has been made, without indicating any person or tribunal to determine that fact, necessarily delegates that power to the commissioners, and, if delivered improvidently, the bonds will not be invalidated." Commissioners vs. Nichols, 14 Ohio, (N. S.,) 260.

In Flagg vs. City of Palmyra, 33 Mo., page 440, the act of the Legislature, as in this case, provided "that before any such subscrip-
"tion shall be made the city council shall call an election of the
"qualified voters of the city, * * and if a majority of the
"qualified voters voting at said election shall be in favor of such sub-
"scription, the same shall be made by the city council." The city subscribed and issued bonds under the act, but in return to a mandamus to compel the levy of a tax to pay the interest, set up that no call or notice of an election was given, and no votes cast, received, counted or returned relating to the subscription, as required by the act. The court held the return insufficient, as against a bona fide holder of the coupons, and *that the issue of the bonds* authorized the latter to suppose that all those things had been done in the *time, form and substance required by the law.*

III. *The act of February 28, 1867, validated the election and cured any irregularities in holding it.*

"The Legislature may, by subsequent act, validate and confirm "previous acts of a corporation otherwise invalid." Winn v. Macon, 21 Geo., 275; McMillen v. Boyles, 6 Iowa, 391; Bessell v. City Jeffersonville, 24 How., 287; City of Atchison v. Butcher, 3 Kansas, 104.

It is a well recognized principle of law that where a power must be conferred to render the performance of a particular act valid and binding, such act, done without authority, may be so ratified and confirmed that it will have all the force and effect a prior conferred power would have given it.

Defective subscriptions may be ratified in all cases where the Legislature could originally have conferred the power. Keithsburg v. Frick, 34 Ill., 405; Copers v. Charleston, 10 Rich., (So. Car.,) law 491; McMillen v. Boyles, 6 Iowa, 304; Gelpecke v. Dubuque, 1 Wallace, 220; People v. Mitchell, 35 N. Y., 551; Thompson v. Lee Co., 3 Wallace, 327; Bass v. Columbus, 30 Geo., 845; City v. Lamson, 9 Wallace, 477.

In Thompson v. Lee County, supra, a subscription had been made by the county which was decided by the State court of Iowa to be invalid, on account of irregularities in the election necessary to confer the power, so that no such power was conferred. The Legislature of Iowa passed an act legalizing the votes taken upon the proposition to aid in the construction of the railroads, and the issue of the bonds. The latter were issued by the County Judge, with coupons attatched. Upon suit by the tax-payers, to restrain the collection of a tax to meet the interest, the Supreme Court of Iowa held the tax lawful, but afterwards reviewed and reversed the decision. Suit was brought in the United States Court upon the coupons, and the court held, in reference to the act of the Legislature validating the election, that if the Legislature possessed the power to authorize the act to be done, it could, by a retrospective act, cure the evils which existed, because the power had been irregularly executed.

The City of Kenosha issued its bonds to aid in the construction of a railroad, under the provisions of an act of the Legislature which authorized the borrowing of an unlimited sum, in violation of the Constitution of the State, which required the Legislature to restrict the power so as to prevent abuses in contracting debts. Subsequent to the issue of the bonds, the Legislature passed an act which this Court held ratified the ordinance, by which the city lent its credit to the amount of $100,000, and that this was equivalent to an original limit to the amount. City v. Lamson, 9 Wallace, 485.

In regard to ratification by legislative act, this Court said, in Beloit v. Morgan, 7 Wallace, 624:

"This is not an open question in this Court. Whenever it has been presented the ruling has been that in cases of bonds issued by municipal corporations, under a statute upon the subject, ratification by the Legislature is, in all respects, equivalent to original authority, and cures all defects of power, if such defects existed, and all irregularities in its execution." The courts of Illinois hold the same.

The statute of Illinois authorized the inhabitants of any school district to vote a tax for the purpose of building school houses, "on any Saturday of May or June." A tax was voted for that purpose on Saturday, the 20th *of July*. Pending a suit to restrain the collection of the tax, the Legislature passed an act legalizing the vote, and declaring it "good, valid and effectual in law and equity."

The court held that "under the law existing at the time the vote was had the tax was illegally levied and invalid, but that the act legalizing the vote and curing the defects therein, was effectual for that purpose, and that the Legislature, *without any doubt, had authority to enact that law.*" Cowgill et al. v. Long, 15 Ill., 203.

"Where a subscription is unlawfully made, the Legislature may, by a subsequent act, legalize its action." Keithsburg v. Frick, 34 Ill., 405.

It would be sufficient to rest our case here, without discussing the soundness of the other legal propositions asserted in the instructions of the court. The Supreme Court of Illinois decide that the

The Legislature of Illinois has passed acts at every session since the adoption of the Constitution of 1848 validating County town and school district taxes and elections and votes in regard to such taxes See session laws Ill 1849 page 42 do 1851 pp 10 & 126 do 1853 p 95 do 1855 page 189 Private laws page 693 do 1859 pp 175 - 177 & 207

language, majority of the voters of a county, means the majority of the votes cast at the election held to decide the question; and that the Legislature can validate a subscription or election unlawfully made.

The evidence shows that at the election held to vote upon subscription to this railroad, a majority of the legal voters of the township voting at the election were in favor of subscription, and, in accordance with that vote, the subscription was made and the bonds issued. Were the recitals wholly disregarded and no estoppel set up and claimed, still these facts must entitle the defendant in error to judgment.

IV. *The issue of township bonds could be authorized by the Legislature without the vote of the electors of the township.*

The power of a State Legislature *to authorize the officers* of the political divisions or municipal corporations of the State to make contracts in regard to local matters, and execute securities and obligations on behalf of and binding upon the people of the corporation or division, as well as to levy taxes for their payment, has been recognized and affirmed by this Court and the State Courts. Curtis v. County of Butler, 24 Howard, 435.

It is needful only to inquire whether limitations upon this legislative power are imposed by the Constitution of the State of Illinois.

That to enable the officers to act for and bind the corporation or division, in the exercise of legislative authority delegated to them, it does not require a previous vote of the electors of the corporation or division authorizing the action, is evident from the reading of the constitution itself, as well as the decisions of the courts of the State.

1st. Constitutional provisions.

The Constitution adopted by the State of Illinois, and in force April 1st, 1848, provided, by Article IX, Sec. 5, that—

> The corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes.

Who are the *corporate authorities* of counties and townships in whom the Legislature may vest the power to assess and collect taxes for corporate purposes ?

The meaning of this section in its application to counties and townships is apparent by examining other provisions of the constitution relating to counties and townships.

In lieu of the County Commissioner's Court then existing, it was provided by Art, 5, Sec. 19 :

> " The County Judge, with such Justices of the Peace in each county as may be designated by law, shall hold terms for the transaction of county business, and shall perform such other duties as the General Assembly shall prescribe."

And by Article VII, Sec. 6 :

> The General Assembly shall provide, by a general law, for a township organization, under which any county may organize whenever a majority of the voters of such county, at any general election, shall so determine ; and whenever any county shall adopt a township organization, so much of this Constitution as provides for the management of the fiscal concerns of the said county by the County Court may be dispensed with, *and the affairs of said county may be transacted in such manner as the General Assembly may provide.*

A township organization system then existed in several of the States of the Union. It was not the New England town meeting, but a modification combining a joint county and town government, under which the local affairs had been managed, and taxes assessed and collected for many years in New York, Michigan and other States. It provided for a supervisor and other local officers, assigning to each separate and distinct duties in relation to town affairs, and for a Board of Supervisors to manage the affairs of the county.

2d. Legislation.

At the first regular session after the adoption of the constitution of 1848, the Legislature did provide for a township organization by a general law, which was substantially a copy of the New York law in its main features, authorizing the Board of Supervisors to levy taxes upon the towns of the county for local purposes for the amount laid before them by the Supervisor of the town, the amount being the aggregate of town charges and claims allowed

by the Supervisor, Town Clerk and Justices of the Peace, acting as a board of town auditors. Gross' Statutes of Ill., page 753, § 7. Among the town charges are enumerated :

3d. The moneys authorized to be raised by the vote of a town meeting for any town purposes.

4th. Every sum directed *by law to be raised* for any town purpose. Gross' Stat., page 753, § 8.

The law directed that—

> The moneys necessary to defray the town charges of each town shall be levied on the taxable property of such town in the manner prescribed in the act for raising revenue and other moneys for State and county purposes and expenses. Gross' Stat., page 753, § 9.

The administrative duties were required to be performed by different officers, some of them having power sometimes alone, and sometimes conjointly with others to contract or perform duties which would bind and render the town liable for their action.

The Commissioners of Highways had power, without any vote or order of the electors, to lay out roads and bind the town by agreement with the owner, or by assessment of the damages to him. Gross' Stat., page 772, § 62 ; page 775, § 88. They also, without being authorized by a vote of the electors, had power "to assess a road tax on all real estate liable to taxation of the town to any amount they may deem necessary, not exceeding forty cents on each one hundred dollars' worth, as valued on the assessment roll of the previous year." Gross' Stat., page 765, § 8.

By amendments to the township organization law, approved Feb. 27th, 1854, their statement, without any vote of the town thereon, laid before the town auditors, as to the amount necessary for the construction of a bridge in the town, certified by the auditors to the Board of Supervisors, imposed the duty upon the latter of levying a tax upon the town for the collection of the amount. Gross' Stat., page 766, § 14.

Overseers of roads, by the same amendment, in the care of roads and bridges, can bind the town for material used in their repair,

the value of which, when ascertained, is made a town charge, and collected by taxation upon the town without any vote of the electors in regard thereto. Gross' Stat., 770, § 52.

In counties where the support of the poor was made a town charge, Supervisors, as ex-officio Overseers of the Poor, of the town were authorized to expend the amount necessary for the care of paupers, and their expenditures became a town charge. Gross' Stat., 752, § 11.

It will be seen from the provisions of the Constitution above quoted, and from the township organization laws of other States, as well as of those of Illinois, passed almost immediately upon the adoption of its Constitution, and therefore a contemporaneous legislative construction of its meaning, that *the vote and sanction of the electors of a county or township is not required by the Constitution* to authorize the assessment and collection of taxes for corporate purposes upon and within such county or township, or to execute contracts and obligations, or create a liability for corporate purposes which will require taxes to be assessed and collected for such purpose.

Ample power is left by the Constitution in the Legislature to designate the officer, board or agent to act for and bind the county or township, *if they are duly elected or appointed authorities of the county or township.* It may be a County Judge and two Justices of the Peace, a Board of Supervisors, Commissioners of Highways, an Overseer of the Road, an Overseer of the Poor, a Supervisor, Town Clerk, Justices of the Peace, or any other *officer of the county or township* authorized in the discretion of the Legislature to act for it.

The unchallenged daily exercise of the power of taxation and making contracts for local purposes by these officers, without the previous vote or assent of the electors for whom they act, is worthy of consideration in the search for the meaning of the Constitution as understood by those who adopt it.

The constant exercise of power by the General Assembly is

evidence of its rightful possession by that body. State of Iowa v. Co. Judge Davis Co., 2 Iowa, 280 ; State v. Mayhew, 2 Gill., 487.

Cooley's Constitutional Limitations 67 Cohens v Virginia 6 Wheaton 418 Rogers v Goodwin 2 Mass 478; Bingham v Miller 17 Ohio 446; 23 Ill. 207

But we have not to rest upon the apparent interpretation and legislative construction of these constitutional provisions. We have numerous decisions of the Supreme Court of Illinois affirming the power of the Legislature to vest authority in and designate officers who can act for and bind a county or township without the vote or sanction of the electors of such county or township. The first decisions were rendered early after the adoption of the constitution.

The constitutional limitation applies to school districts as well as counties and townships, for the section reads : "The corporate "authorities of counties, townships, school districts, etc."

The school law of the State of Illinois authorizes school directors, without a vote of the people of the district, to levy taxes to keep up school not exceeding six months in the year, and to build a school house not costing over $1000. Statutes Ill., 1858, Scate's Ed., page 448. In three cases before the court contesting the legality of taxes thus voted, the constitutionality of the law was not questioned, and the legality of the tax sustained.

"Where the cost of a school house to be erected does not exceed one thousand dollars, the directors may make such a levy as is necessary for that purpose." Schofield v. Watkins, 22 Ill., 66 ; Munson v. Minor, 22 Ill., 594.

"The directors may also levy and collect a tax to keep a school six months in each year in addition to the amount provided by the State and township fund." Merritt v. Farris, 22 Ill., 303 ; Munson v. Minor, 22 Ill., 594.

The school law of Illinois of 1849 required a vote of the legal voters of a school district to authorize a school tax, which was required to be held on any Saturday in May or June, or might be held upon any Saturday upon request of five of the inhabitants and notice by the directors. The tax voted was required to be

certified before the first of July by the District Clerk to the County Clerk.

A meeting was held on the 20th of July, 1850, and voted a tax, which was, on the 15th of October of that year, certified to the County Clerk. The court held the tax illegal, and that it was improperly voted, but that a subsequent act of the Legislature, passed in 1853 and after the collection of the tax had been enjoined, legalizing the tax was sufficient, and that the Legislature had power thus to validate the tax and ratify the action of the district. Cowgill v. Long, 15 Ill., 202.

An examination of the case will show that it can only be sustained upon the principle that the Legislature could authorize the tax to be imposed without a vote of the electors, for it imposed the burden of the tax upon *the owner of property in* 1850, which the electors had no power by the law to do on the 20th of July of that year.

Under the township organization law the Overseers of the Poor can make a binding contract on the county without any other officer joining or acting with him. Supervisors v. Plant, 42 Ill., 330.

In Misner v. Bullard, 43 Ill., 476, the Legislature authorized the Board of Supervisors of Livingston County to levy a special tax upon the taxable property of any town of the county, to pay or discharge any indebtedness incurred by such town or person on account of local bounties paid or agreed to be paid by the town or person. The person was required to submit his claim only to the board of town officers, and no vote whatever of the electors was required. Individuals who had paid out, as bounties, $7,900, presented their claim to the board, who allowed it, and the Supervisors levied the tax. Held that the law was constitutional, and that no election was necessary.

The franchises of counties and towns are under the legislative control, and may be altered, changed, abridged, enlarged or repealed at the will of the General Assembly.

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Town of Freeport v Board of Supervisors 41 Ill 495

In The Town of Freeport v. Board of Supervisors, 41 Ill., 495. The court held that the liability of the town for the support of the poor could be imposed by the Legislature, without the consent of the voters. Consequently under the decision in Supervisor v. Plank (supra) the Overseer of the Poor could by contract bind the voters

In Keithsburg v. Frick, 34 Ill., 405, the court say :

"There was no necessity to submit the question to the legal "voters, as the act grants the power expressly to the President "and Trustees.

"It is by no means a necessary element in these subscriptions "that there should be a vote of the inhabitants of the town or city "authorizing them. It is competent for the Legislature to bestow "the power directly on the corporation without any intermediary, "as they did in this case."

In Misner v. Ballard, 43 Ill., 476, the court say :

"The Constitution authorizes the levy of a tax for corporate purposes, but fails to indicate the body or persons who shall make the levy. *That is left to be determined by the General Assembly.* In this case they have authorized the Board of Supervisors ultimately to make the tax. * * * The act does not require that there should be a vote of the citizens of the town for or against the tax, or the vote which should be imposed. *The holding of the election was simply useless and unnecessary.*"

This decision was rendered at the April Term preceding the execution of the bonds upon which this suit is brought. It was the law at that time, and prior thereto uniformly held by that court.

The counsel for plaintiff in error denies that the Legislature of Illinois could authorize the Supervisor and Clerk to execute bonds on behalf of their township, in payment of a subscription to the capital stock of a railroad company, without the consent of a majority of the qualified voters of such township given in favor of such subscription and issue of bonds after the enactment of the law authorizing them.

Taking the definition of corporate authorities given by the Supreme Court of Illinois, in Harvard v. St. Clair Drainage Co., 51 Ill., 130, as "those municipal officers who are either directly "elected by the people to be taxed, or appointed in some "mode to which they have given their assent," the counsel for plaintiff in error maintains that, because under the township organization law a Supervisor, Town Clerk, Assessor, Collector, etc., were elected by the people, "there can be no township taxation unless by act of all, or a majority of all, these officers in joint meeting, or by a vote of the electors."

It will be observed that in the case now before this Court, new duties were imposed upon the officer as such, and not upon him as an individual, and the bonds were issued subsequent to the annual meeting held in April, at which the Supervisor and Clerk were required to be elected, and after the passage of the act.

The incumbents of those offices at the time the bonds were executed *were elected by the people of the township to perform this duty* and exercise the additional powers conferred upon the office.

The name and number of officers do not constitute "corporate authorities." These are left to the discretion of the Legislature. It is the functions, the powers conferred, that create an officer a coporate authority, competent to act as such.

Counsel for plaintiff in error cites the case of Marshall v. Silliman, lately decided by the Supreme Court of Illinois, as supporting his position.

An examination of that case will show that the suit was brought to enjoin the *negotiation of the bonds* and the collection of the interest.

2d. The township was, by the act authorizing the subscription, limited to $35,000, and the $15,000 was voted in excess of that sum *in violation and disregard of the law, and without any* previous notice or call for a meeting to vote upon that question.

3d. The act authorizing the execution of the bonds was passed April 19th, 1869, just after the annual election of Supervisor and Town Clerk had been held, and the bonds were executed by these officers in office when the law passed, and not by those subsequently elected.

But if the case of Marshall v. Silliman sustains the position of counsel for plaintiff in error, it is in conflict with the prior decisions of the same court to which I have referred. The legislative power in analogous cases was unquestioned, and conceded by the court at the time the bonds were issued.

"The State courts having, when municipal bonds were issued, construed their constitution and laws so as to give them force and vitality, cannot, by a subsequent and contrary construction, destroy them." Thomson v. Lee County, 3 Wallace, 330.

"When, at the time a loan was made and bonds were issued, the decisions of the State court favored the validity of the law which authorized them, a later adverse decision will not be followed by this Court." The City v. Lamson, 9 Wallace, 478.

"A contract having been entered into between parties, valid at the time by the laws of the State, no decision of the courts of the State subsequently made can impair its obligation." Chicago v. Sheldon, 9 Wallace, 50.

In view of the foregoing decisions of this Court, and in answer to the proposition of counsel for plaintiff in error, that a corporate township cannot be made liable on bonds issued only by a Supervisor and Town Clerk, I call the attention of the Court to the Town of Keithsburg v. Frick, 34 Ill., 405.

That case was decided at the April Term, 1864, of the Supreme Court of Illinois, and was the unquestioned judicial construction of the Constitution of Illinois, and of the powers of the Legislature pertaining to the questions involved in that suit at the time the several events occurred, on which defendant in error bases his right

to a recovery in this action, and it seems to me decisive of the case at bar.

On October 30th, 1855, notice was given for an election to be held November 10, 1855, to decide whether the town should subscribe $20,000 for a railroad, at which election none but freehold voters were permitted to vote. The result of the election was in favor of subscription.

On the 16th of February, 1857, the Town of Keithsburg received a charter from the Legislature of Illinois, Sec. 2d of which "author- " ized the President and Trustees to subscribe for and take stock " to the amount not exceeding $20,000, and to issue the bonds of " the corporation therefor." 34 Ill., page 420.

Section 17 of said charter is as follows :

The subscription heretofore made by said corporation to the capital stock of the Warsaw and Rockford Railroad Company, of a sum not exceeding twenty thousand dollars, to be paid for in town bonds, to run for twenty years at an interest not exceeding ten per cent., is hereby legalized and confirmed to the full extent, and for the purpose for which said subscription was made, and the President of said corporation is hereby fully authorized and empowered to execute and issue said bonds under his hand and the corporate seal of said town, and for the payment of which bonds, and the interest accruing thereon as the same becomes due, the faith of said corporation shall be fully pledged and bound : and whenever said bonds shall be issued, a lien is hereby declared to be created against all the real estate within the bounds of said corporation to secure the faithful payment thereof, and the interest that may accrue thereon. The said President and Trustees are hereby vested with full power to make provisions for the payment of the same by levying a special tax, to be collected as other taxes are herein provided for.

34 Ill., page 407.

The court say, page 421 :

But if the subscription was made under the organization allowed by the general incorporation law of 1849, the seventeenth section of the act of 1857 legalizes and confirms it, p. 874 The subscription, therefore, was good if made under the act of 1857, as an original subscription under the second section, or as a subscription made under the act of 1849, confirmed as it is by the seventeenth section of the act of 1857. The bonds may be regarded as issued by the old corporation confirmed by the new act, or as a new issue under the second section of the act of 1857.

There can be no claim that the election held by Keithsburg had greater validity than that held by St. Joseph before the issue of the bonds in question.

The only act in existence under which either could claim the right to vote to subscribe for railroad stock, and issue bonds therefor, is the law passed in 1849, Gross' Ed., 552. That law distinctly and explicitly authorizes *cities* and *counties* to subscribe for railroad stock and issue bonds therefor, acting through the "Common Council of the city," or the County Court or Board of Supervisors of the county, after an election, held on thirty days' notice ; and any argument that would tend to show that Keithsburg might, under the law of 1849, subscribe for railroad stock, would apply with equal force to St. Joseph, the plaintiff in error. St. Joseph, by the township organization law of Illinois, became a body corporate, capable of suing and being sued, of contracting and being contracted with. Gross' Stat., page 742, § 1.

In fact the Keithsburg election was far more objectionable than the St. Joseph election, in that the notice of the election, which was only given ten days instead of thirty as required by statute, was only to the freehold voters of said town, and at the election legal voters in said town not owning real estate therein were not allowed to vote. 34 Ill., 410. Yet as to Keithsburg, the Supreme Court of Illinois say that the section seventeen, before recited, legalized and confirmed the subscription, and that the subscription " was good as a subscription made under the laws of 1849, con- " firmed as it is by the seventeenth section of the act of 1857. The " bonds may be regarded as issued by the old corporation, con- " firmed by the new act."

The Court will see, too, that this section seventeen, under which the bonds are held valid, does not confer the power of making and issuing the bonds upon the corporate authorities of the Town of Keithsburg, but *the President of said corporation is hereby fully authorized and empowered to execute and issue said bonds under his hand and the corporate seal of said town.* An examination of the statute under which towns are incorporated, Gross' Ed., page 96, shows that the President of a town has far less independent power than a Town Supervisor. In fact he has no independent power ; he is simply one of the trustees, selected by the Board of Trustees from their number, to preside at their meetings. An examination

of the special charter of Keithsburg, granted Feb. 16, 1857, gives the President no other powers. Session Laws Ill., 1857 ; Private Laws, 868.

Yet this section seventeen, which the Court hold legalizes the Keithsburg bonds, authorizes the President, and him alone, to issue the bonds declared by that section to be legal and binding.

It will be further observed that the Keithsburg bonds were actually issued under and by virtue of the 17th Section, inasmuch as on the back of each bond said section was printed *verbatim*, as showing the authority under which it was issued. 34 Ill., page 407.

If my view of this case is correct, it decides that an election in favor of subscription for railroad stock, held without authority of law, may be validated by an act of the Legislature, and that a single officer of the municipal corporation may be authorized by such act to issue the bonds to be given in payment of such subscription, and that the bonds are valid.

In view of the foregoing decision, the defendant in error can claim, with perfect confidence, that at the time he purchased the bonds in question the Supreme Court of Illinois had declared bonds identical in character with those in question to be legal and binding obligations on the corporations purporting to issue them.

IV.

Estoppel.

The plaintiff in error is estopped from attempting to impeach the validity of the bonds,

1st. By the circumstances under which they were issued, and the action of the officers and citizens of the township.

2d. By the recitals in the bonds.

1st. Estoppel from circumstances and action of officers and citizens of the township.

The citizens of St. Joseph Township, at two meetings in 1866, one

formally called by the Town Clerk, had expressed their assent to township aid to the construction of the railroad by subscribing $25,000 to its capital stock. The railroad company was organized under articles of association, pursuant to the general law authorizing railroad corporations. At the preceding session of the Legislature a statute is passed amending the articles of association of the railroad, and authorizing a subscription to be made to its capital stock by the duly elected officers of the township, in accordance with the desire of the pepole, in cases where, as in this, an election had already been held and a majority of the legal voters were for subscription. The county of Champaign had representatives in both branches of the Legislature, elected after the meeting held in St. Joseph township, and it is resonable to suppose that this statute was passed at their instance and with the approval of the people of the county and township whom it would affect and benefit.

The township election for officers is held; but no opposition or dissent is expressed to the performance of the duty required by the statute. The railroad is located through the township, "in the summer or spring" of the year. "It was the understanding of the people that the bonds were to be issued," the only question seeming to be whether all at once or one-third at a time. The subscription was made by the Supervisor, the bonds executed to the company, and the certificates of stock were delivered to the Supervisor. His expenses in doing the business are reported to the township board of officers and by them allowed.

A township tax is levied to meet the interest for the first year, and on the faith of that action, and of the assurance of the Supervisor that "it would be collected in the spring," the defendant in error purchased the bonds. *The tax thus levied was paid without objection.* The construction of the road was commenced, and it was completed to St. Joseph Township in 1869, where witness Shreeve was agent in December of that year. The township still holds its certificates of stock in the road, the evidence showing them in the possession of the officers resisting, on behalf of the township, the collection of the bonds, and never has offered to surrender or return them to the company. The full consideration for which the bonds

were executed has been received, not only by the delivery and retention of the stock, but in the construction and completion of the road for its whole distance.

The benefits resulting to the people of the township are clearly set forth in decisions of the courts, maintaining that the construction of a railroad to a town is a corporate purpose.

In the case of Curtis v. County of Butler, 24 Howard, 435, a State law authorized counties to subscribe to the stock of railroads, and execute bonds in payment, and Justice Wayne said, "it was no more than giving to the people of the county a right to tax themselves for an anticipated advantage to arise from the expenditure of their own money in the construction of a railroad. It was the concern of the county; the same as it would have been if the county had been legislatively empowered to tax themselves to clear out a river for a better navigation, or for the cutting of a canal." As Justice Thornton, of the Supreme Court of Illinois, in Chicago, Danville and Vincennes R. R. Co. v. Smith, well says:

"The benefits resulting to the people of the State from our system of railroads are untold and incalculable The mind can scarcely grasp them. Railroads have almost superceded all other modes of intercommunication between the several parts of our extensive and growing States. They have become an absolute necessity—indispensable to our increased growth, and to the removal of our immense surplus. They have added millions to our taxable property; given augmented facilities to every department of trade; enriched the mass of the people; largely enhanced the value of our lands; built up manufactories, and brought us into close proximity with the best markets of the country. All share in the blessings flowing from them.

Railroads are, in truth, the peoples' highways for pleasure and business and commerce. Without them our internal trade would languish and die, and our corn and wheat rot in our granaries."

The advantages are not overestimated. The benefits of railroad facilities, especially to an agricultural community, are, indeed, incalculable. Through economy of time in travel and transportation, they aid in augmenting the productive capacity of the people. A single freight train, with five men, making three trips a week from St. Joseph Township to Chicago, or other shipping market, will transport 200 tons of farm produce at a trip, carrying to market each week the freight that would require 600 teams and 600 men, by ordinary land carriage.

The railroad cheapens the cost of production and of interchanging commodities. It facilitates commercial intercourse, and brings life, activity, population and wealth to deserted villages and sparsely settled or frontier towns.

Shall St. Joseph Township, having now secured these advantages; shall its people, who, by such a large majority, expressed their desire to aid in the building of the road, who silently assented to the issue and negotiation of township securities, now that the railroad is completed, be permitted to avoid the payment of a debt for which it has received and retains the full consideration?

That such estoppel applies to municipal corporations as well as individuals, both reason and authority maintain.

Numerous
~~Municipal~~ authorities hold that where, as in Knox County v. Aspinwall, "the right of the board to act in the execution of the authority is placed upon the fact that a majority of the votes had been cast in favor of the subscription, and to have acted without first ascertaining it, would have been a clear violation of duty, and the ascertainment of the fact was necessarily left to the judgment of the board itself, as no other tribunal was provided for the purpose. After the authority has been executed, the stock subscribed, and the bonds issued and in the hands of innocent holders, it would be too late, even in a direct proceeding, to call it in question. Much less can it be called in question to the prejudice of a bona fide holder of the bonds in this collateral way." Knox Co. v. Aspinwall, 21 Howard, 539; also Bissell v. Jeffersonville, 24 Howard, 287; S. P. Railroad Co. v. Evansville, 15 Ind., 395; Rogers v. Burlington, 3 Wallace, 654.

The latest published decisions of this Court sustain and apply this estoppel.

"Where the county was authorized to issue bonds in payment for subscription to stock in a railroad company, upon condition that a majority of the real estate holders residing in the county should vote for the subscription, held that the county, having exchanged the bonds for stock, which it held for 17 years and still held, could not assert against a purchaser for value that the bonds were issued in disregard of the conditions." Pendleton Co. v. Any, 13 Wallace, 298.

Evidently the rights of the purchaser of the bonds accrued upon his purchase, and it is the conduct of *the county in retaining its stock*, and of its officers in issuing the bonds, that created the estoppel in that case, while length of time would only strengthen the presumption

that it was done advisedly and without the dissent of the people for whom the officers were acting.

The Supreme Court of Illinois, in Supervisors of Mercer County v. Hubbard, 45 Ill., 139, a later case than any in that Court cited by counsel for plaintiff in error except one, say :

"It is shown, by the record, that the county received stock in this railroad company to the full amount of their subscription, and have repeatedly voted the stock and paid the interest on the bonds, and it is not for them now to say the county is not bound for the accruing interest."

"Whether, then, the bonds were issued in and by virtue of the second section of the act of 1857 or of the 17th section, we think the corporation is estopped from now setting up any irregularity in their issue, inasmuch as they have repeatedly recognized their validity by paying them out, levying taxes and paying the interest on them for a series of years, it is now too late to raise a question as to the irregularity of their issue." Town of Keithsburg v. Frick, 34 Ill., 421.

It seems not only unnecessary but presumptuous, to argue the further question presented by the record and the 2d instruction of the court below. The law, as there stated, is the settled doctrine of this Court. It has been repeatedly argued and repeatedly sustained. Contracts and moneyed transactions involving millions of dollars in value have been consummated upon the faith of parties in the rulings of this Court. Before, however, referring to the decisions upon which the instruction was based, it should be observed that the case, as presented in the record and evidence, without regard to the recitals in the bonds, entitles the defendant in error to a recovery.

It is sufficient, if the facts and the law authorized the issue of the bonds as executed, or the course of the plaintiff in error in regard to them, forbids disputing their validity. If the election was not indispensable, it matters not whether the Legislature could or did validate it.

If the law is correctly stated in the first instruction, defendant in error can maintain his action, although the second instruction was erroneous.

" A verdict in accordance with the weight of evidence ought not to

"be set aside on account of an erroneous instruction given by the "court to the jury." Harris v. Doe, 4 Black, 369; Morton v. Lawson, 1 B. Munroe, 45; Graham v. Bradley, 5 Hampt., 476; Emamel v. Cocke, 6 Dana, 212; Howard v. Miner, 7 Shep., 325; Frieman v. Bawkin, 8 Shep., 446; Reynolds v. Magsress, 2 Iredell, 26; Jewith v. Lincoln, 2 Shep., 116.

"A verdict will not be disturbed, if in accordance with the weight "of evidence and with justice, on account of erroneous instructions to "the jury." Roberts v. Nodwift, 8 Ind., 339.

"A motion for a new trial will not be granted for an erroneous "ruling of the judge on the circuit, where it is apparent that the "verdict, on a re-trial of the case, must be the same as on the former "trial." Sheldon v. School Directors, 24 Conn., 88; also Wilkinson v. Griswold, 12 So. M., 669.

2d. *Estoppel from recitals in the bonds.*

The second instruction does not assert that the plaintiff in error is estopped from showing that *no* election was held, but from denying the fact of a *valid* election.

In the cases cited by counsel for plaintiff in error, where bonds have been held by this or other courts void, an election being required by the statute authorizing their issue, *no* election was held, or the election was in regard to issuing bonds to *a different corporation from the one to which they were issued*, as in Marsh v. Fulton, which was *no election*, or where the power to issue the bonds was denied or prohibited, and, therefore, any election illegal.

The instruction presents the proposition that the recitals in the bond protect the bona fide holder for value, against irregularities or erroneous conclusions of the officers in regard to the election held, which might impeach the bonds in the hands of parties, with notice. Whether the word "valid" intends this qualification or not, the authorities fully sustain the instruction. I shall but refer to them, for they are familiar to this Court.

In Knox v. Aspinwall, 21 Howard, p. 545, the Court say, in regard to the recitals in the bond in that case, that: "*The purchaser was "not bound to look further for evidence of a compliance with the con-"ditions, to a grant of power.*" The recital was: "This bond is issued in part payment of a subscription of $200,000, by the said Knox County, to the capital stock, &c., by order of commissioners, in pursuance of the 3d section of the act, &c., passed by the General Assembly of the State of Indiana, and approved January 15th, 1849."

It was claimed that the notice of the election to vote upon the question was insufficient, and that the commissioners had no power to execute the bonds.

This decision was approved in Moran v. Miami County, 2 Black, 722, and the principle applied to the latter case, in deciding which, the Court say:

"We think and adjudge that the recitals in the bond are conclusive, constituting an estoppel *in pais*, upon the defendants in this suit."

This doctrine was reiterated and enforced in the following cases: Mercer County v. Hackett, 1 Wallace, 83; Gelpcke v. City of Dubuque, 1 Wallace, 175; Van Hortrop v. Madison City, 1 Wallace, 291; Meyer v. Muscatine, 1 Wallace, 384; Supervisors v. Schenck, 5 Wallace, 772; Mayor v. Lord, 9 Wallace, 414.

The objection that the election was held on the 4th, instead of the 14th, as recited in the bond, seems sufficiently answered by referring to the law. It was immaterial on what day the election was held, and it was not necessary to state it in the bond. It is one of the facts which the recital should make conclusive.

The defendant in error presents to the Court as clear a case and as strong a claim as any whose rights, under similar obligations, this Court has firmly sustained and enforced.

He took every reasonable precaution before advancing his money to purchase the bonds. They were negotiable securities, so held by this Court, and passed by delivery. He was a citizen of another State, and would need to look only to the decisions of this Court to ascertain what bonds could be safely purchased by him.

The bonds themselves recite that an election has been held, as required by law, and this Court has uniformly held such recital conclusive. The statutes of Illinois declare the election legal.

If he questions as to the authority of the Legislature to pass the act, counsel must assure him that this has never been questioned in the State, and is expressly upheld by the Supreme Court of the State in analogous cases.

Political revulsions, brief terms of office and sensitiveness to the changing moods of popular opinion, might affect the stability of the decisions of the State courts. He can, with confidence, rely upon the early and repeated decisions of this Court, which, because insensible to popular clamor or personal considerations, the constitution and laws have made the special tribunal for the protection of the rights of citizens of different States.

But this defendant in error, though, as a prudent man, he may well rely upon the published decisions of this Court, and those of Illinois, in addition, exercises unusual precaution. He makes inquiry of the officers themselves, and, although other officers than those who executed the bonds had been elected and were acting, even they assured him that *a tax has been levied, and the interest will be met.* All welcome the expected railroad, and want his money to help build it. He buys the bonds; the road is built; the citizens have a station at their doors; the whole debt is but a trifle over a dollar an acre, and less than the enhanced price charged upon its lands by the government, where it has granted lands to aid in building railroads, for five times the distance from this road to the town limits, and yet, some of the citizens seek to repudiate the subscription, and avoid the obligations by means of which these advantages were secured. He has been compelled to resort to the courts to enforce his rights. He has recovered judgment in the court below, and has been brought here by debtors who seek to obtain from this Court a reversal of former well considered opinions and solemn ajudications, and consummate, thereby, their intended repudiation.

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